

Remarks

REQUEST FOR CONTINUING EXAMINATION

This Response is being filed with a Request for Continuing Examination under 37 CFR § 1.114 and the fee set forth in § 1.17(e). The Applicant, therefore, requests that the Examiner withdraw the finality of the Office Action mailed on August 9, 2007, and reconsider the application in view of the new arguments presented in this Response along with a formal request with an interview with the Examiner.

Argument

I. Examiner's Rejection of Claims 28-37 under 35 USC §112, 1st Paragraph is Legally Inappropriate

The Examiner has rejected claim 28-37 as failing to comply with the written description requirement by stating that the specification fails to provide support for the first and second flexible films being undulating per claims 28, 30, 34, and 37. The specification provides ample support for the first and second flexible films being "undulating". The specification states that insulative pockets 18 extend downward in outer layer 14 from one quarter to one half inch approximately, and extend upward in bottom outer layer 16. Page 9 of the present application, lines 16-19. Figures 2 shows the first and second flexible films 22 and 24 in such an undulating configuration, where the insulative pockets 18 extend substantially downward from upper film 20 and insulative pockets 18 extend substantially upward from film 26. Pages 9-10 of the present application. The Examiner even states that Figures 2-4 may be somewhat undulating, and that the cross sectional view is not actually undulating. Contrarily, the cross sectional view displays such an undulating feature of the first and second flexible films. Therefore, there is proper support for the first and second flexible films being undulating.

The Examiner also states that the specification fails to provide support for the "heat reflective elements dispersed throughout" a film per claims 28, 29, 30, 31, 34, 35, and 37. However, the specification states that the flat film 26 and 24 is impregnated or coated with a heat reflective material, such as flecks of aluminum or other heat reflective flecked material or

pigments. Page 10 of the present application, lines 8-18. Such a heat reflective material impregnated in the films 24 and 26 is such a heat reflective element dispersed throughout the film. The Examiner states that the term "elements" could encompass other things, i.e. mirrors, which are not supported in the specification. The Applicant notes that the specification does not have to encompass other reflective elements, but rather encompasses the reflective material as disclosed in the specification. Therefore, the specification provides proper support for heat reflective elements dispersed throughout a film.

The Examiner also states that the specification fails to provide support for the second moisture impervious film having an additional reflective coating thereon per Claim 29. While the specification does state that the film may be impregnated or coated with a heat reflective material, such as flecks of aluminum, an aluminum pigmented coating, or other heat reflective flecked material or pigments, the specification does not exclude the combination of the heat reflective material dispersed within the film and a coating thereon. No such exclusive requirement for the heat reflective material being dispersed or as a coating is stated in the specification, and the Applicant respectfully requests the Examiner to refrain from reading language into the specification. Therefore, the specification provides proper support for Claim 29's second moisture impervious film having an additional reflective coating thereon.

Finally, the Examiner has stated that the specification fails to provide support for the "nonstick" recitation in Claim 33. The specification provides proper support for the nonstick limitation where bottom layer 16 has a smooth surface as to not adhere to the curing concrete nor leave any marks on the associated concrete surface. Such a disclosure makes it readily apparent that the bottom layer includes a nonstick surface to one of ordinary skill in the art.

II. Examiner's Rejection of Claims 28-31 and 33-37 under 35 USC §103(a) as being unpatentable over Hines, Edgel, or Hunter in view ADPA or Kern is legally inappropriate.

The Examiner has stated that all of the primary references teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant's Figure 1 and 2. First, the Applicant objects to the Examiner's characterization of Claims 28 and

34 as drawn to Figures 1 and 2. It is important not to import into a claim limitations that are not part of the claim. MPEP §2111.01, citing *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). Claims 28 and 24 do not refer to Figures 1 and 2, as Figures 1 and 2 are provided for enabling the application and do not limit Claims 28 and 24 as the Examiner has suggested. Secondly, Hines, Edgel, and Hunter do not contain each and every limitation of Claims 28 and 34. Claims 28 and 34 claim “open spaces communicate in a heat transfer path as to form a flexible heat reflective concrete cure blanket”. Hines, Edgel, and Hunter are silent to a heat transfer path as to form a flexible heat reflective concrete cure blanket. Therefore, Hines, Edgel, and Hunter, in view of Kern, do not render Claims 28 and 34 obvious.

Additionally, there is no motivation, suggestion, or teaching to substitute one reflective layer for another reflective layer to render Claims 28-31 and 33-37 obvious. There must be some suggestion, teaching, or motivation that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999); *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1572 (Fed. Cir. 1996), emphasis added. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one reflective layer for another as the outer layer, as taught to be known by the ADPA, motivated by the fact that the Hines, Edgel, and Hunter (“primary references”) teach the outer layer to be reflective. Hines, Edgel, Hunter, and Kern have no indication for a flexible heat reflective concrete cure blanket. The motivation that the outer layers in the prior art references are reflective is incorrect and misplaced. The primary references teach a sheet of foil for rigid material (Edgel), a thermoplastic sheet coated with aluminum (Hunter), or a metallic foil as the middle layer (Hines). While foil or aluminum may be reflective, such reflective properties are not discussed or suggested for the outer layer. More so, the references are silent as to substituting reflective layers for other reflective layers. Therefore, there is no motivation to substitute one reflective layer for another in the prior art references to render Claims 1, 2, 4, 7, and 9-12 obvious.

Moreover, there is no motivation to combine the Kern Reference with Hines, Edgel or Hunter. Obviousness can only be established by combining or modifying the teachings of the

prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). The Kern reference is for organic and inorganic pigment concentrates and pelletized metal pigment product. Hines, Edgel, and Hunter provide no showing or disclosure of metal resin pellets. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

Lastly, the Applicant objects to the Examiner citing Page 10 of the specification wherein the Applicant refers to an example of a suitable reflective material being available. The specification provides examples of suitable reflective material in order to comply with the written description and enablement requirement. Again, the Examiner is inappropriately applying statements and implying a motivation to combine Applicant's own disclosure in an obviousness rejection. Respectfully, Applicant requests the Examiner to withdraw such statements for an obviousness rejection.

III. Examiner's Rejection of Claim 32 under 35 USC §103(a) as being unpatentable over Hines, Edgel, or Hunter in view of ADPA or Kern in view of Sheridan is Legally Inappropriate

There is no motivation to combine the Sheridan Reference with Hines, Edgel or Hunter. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

IV. Examiner's Rejection of Claims 28-31 and 33-37 under 35 USC §103(a) as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA or Kern is legally Inappropriate

The Examiner has stated that Brockhaus, Handwerker, or Aanestad ("all primary references") teach first and second moisture impervious films with a first and second undulating film applied thereto per Claims 28 and 34 and forms a structure of two bubble type laminates facing one another as shown in applicant's Figure 1 and 2. First, the Applicant objects to the Examiner's characterization of Claims 28 and 34 as drawn to Figures 1 and 2. It is important not to import into a claim limitations that are not part of the claim. MPEP §2111.01, citing *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed.

Cir. 2004). Secondly, Brockhaus, Handwerker, Aanestad, and Kern do not contain each and every limitation of Claims 28 and 34. Claims 28 and 34 claim “open spaces communicate in a heat transfer path as to form a flexible heat reflective concrete cure blanket”. Brockhaus, Handwerker, Aanestad are silent to a heat transfer path as to form a flexible heat reflective concrete cure blanket. Therefore, Brockhaus, Handwerker, Aanestad in view of Kern do not render Claims 28 and 34 obvious.

Additionally, there is no motivation, suggestion, or teaching to substitute one reflective layer for another reflective layer to render Claims 28-31 and 33-37 obvious. There must be some suggestion, teaching, or motivation that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999); *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1572 (Fed. Cir. 1996), emphasis added. The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one reflective layer for another as the outer layer, as taught to be known by the ADPA, motivated by the fact that the Brockhaus, Handwerker, or Aanestad teach the outer layer to be reflective. Office Action Page 4, lines 10-15. In the ADPA, the Applicant stated that alternative reflective material is readily available to one of ordinary skill in the art. Such statement provides no motivation to substitute one aluminum layer for another, because recombining what is available to one of ordinary skill in the art is insufficient for an obviousness analysis. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). None of the prior art references suggest that the one reflective layer may be substituted for another. Furthermore, the Examiner is using hindsight construction to create an obviousness rejection. As such, the Examiner’s obviousness rejection of Claims 28-31 and 33-37 is legally inappropriate.

Finally, there is no motivation to combine the Kern Reference with Brockhaus, Handwerker, or Aanestad. The Kern reference is for organic and inorganic pigment concentrates and pelletized metal pigment product. Brockhaus, Handwerker, or Aanestad provide no motivation to combine Kern, as Brockhaus, Handwerker, or Aanestad provide no showing or

disclosure of pelletized metal pigment product. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

V. Examiner's Rejection of Claim 32 under 35 USC §103(a) as being as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA or Kern and Sheridan is legally inappropriate

While the specifically claimed elements in Claim 32 is broader than the specific disclosure in the Sheridan Reference, the patentability of Claim 32 is based upon the patentability of independent Claim 28, as discussed above. Accordingly, the obviousness rejection for Claim 32 under 35 USC §103(a) is legally insufficient.

Conclusion

In light of the preceding discussion, Applicant submits the following claims 28-37 contain patentable subject matter. On this basis, Applicant respectfully submits that the Examiner should allow such claims.

Any amendments made during prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as acknowledgement of the validity of any rejection raised earlier in prosecution, nor as acknowledgement that any citation made against the application is material to the patentability of the application prior to amendment.

No fees are believed due with this Response, however, the Commissioner is hereby authorized to charge any underpayment in fees, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000, of which the undersigned is an authorized signatory.

Should the Examiner require any further information or wish to discuss any aspect of this Response; the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,



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